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## BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
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Arizona Corporation Commission

DOCKETED

OCT 24 2014

DOCKETED BY

IN THE MATTER OF CAREFREE 34, INC./  
OFFICE ON EASY STREET, INC. dba VENUES  
CAFÉ,

DOCKET NO. SW-02361A-13-0359

COMPLAINANT,

vs.

ORIGINAL

LIBERTY UTILITIES CORPORATION f/k/a  
BLACK MOUNTAIN SEWER CORPORATION,

RESPONDENT.

**PROCEDURAL ORDER**  
**(Continues Hearing)**

**BY THE COMMISSION:**

On October 22, 2013, Carefree 34, Inc./Office on Easy Street, Inc. dba Venues Café ("Café" or "Complainant") filed with the Arizona Corporation Commission ("Commission") a Complaint against Liberty Utilities Corporation f/k/a Black Mountain Sewer Corporation ("Company" or "Respondent") alleging rate discrimination in its charges for sewer service. Complainant further alleges that the increase is unaffordable and unreasonable.

On October 30, 2013, Respondent filed an Answer to the Complaint stating that the Company is charging the rate authorized by Decision No. 71865 (September 8, 2010).

On November 4, 2013, by Procedural Order, a Procedural Conference was scheduled on November 19, 2013, to discuss the issues presented in the Complaint arising from Decision No. 71865.

On November 19, 2013, Ms. Catherine Marr who owns the Café appeared and the Company and the Commission's Utilities Division ("Staff") appeared with counsel. The Café's owner and the Company's counsel indicated that they had previously tried to reach a resolution of the issues and had gone through mediation with Staff without a successful resolution of the issues raised in the Complaint. Further, the attorney for the Company stated that it is charging the approved tariff rate

1 which was established for a particular type of commercial establishment, such as the Café, based on  
2 the then current Arizona Department of Environmental Quality ("ADEQ") Engineering Bulletin No.  
3 12 ("Bulletin") pursuant to Decision No. 71865.<sup>1</sup> Staff counsel added that it is very difficult to  
4 change an approved rate absent a rate case.

5 It was further discussed that the Complainant could file a request with the Commission  
6 pursuant to A.R.S. § 40-252, to reopen the rate case proceeding in order to reconsider and/or modify  
7 the rates established in Decision No. 71865 in Docket No. SW-02361A-08-0609. Subsequently,  
8 after further discussions, the Complainant and the Company were unable to resolve the Complaint  
9 and since an action had not yet been filed by the Complainant pursuant to A.R.S. § 40-252, a hearing  
10 was scheduled.

11 On January 14, 2014, by Procedural Order, a hearing was scheduled on April 24, 2014.

12 On April 21, 2014, the Complainant filed a petition and request for action by the Commission  
13 in Docket No. SW-02361A-08-0609 pursuant to A.R.S. § 40-252.

14 On April 23, 2014, by Procedural Order, this proceeding was continued pending the outcome  
15 of Complainant's request to reopen the rate case pursuant to A.R.S. § 40-252.

16 On September 19, 2014, the Complainant filed a Motion to Reschedule Hearing ("Motion")  
17 because there had been no action taken on the Complainant's petition to reopen the rate case pursuant  
18 to A.R.S. § 40-252. Attached to the Complainant's Motion as an exhibit was a copy of a letter to the  
19 Company that announced a "Notice of Termination" based on the disputed billing charges  
20 (\$9,197.84) which have arisen from sewerage service under the tariff established in Decision No.  
21 71865.

22 On September 23, 2014, by Procedural Order, a hearing was scheduled on October 28, 2014.  
23 It was further ordered that no disconnection of service be effectuated, if at all, until after a  
24 Commission Decision is rendered in this proceeding. Further, Staff was directed to be present at the  
25 proceeding and to be prepared to participate if required.

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28 <sup>1</sup> The Bulletin established sewerage rates for restaurants based on either the "chair count" of the establishment or the number of meals served per day.

1 On October 17, 2014, Respondent filed a Motion to Compel Response to Data Requests  
2 ("Motion to Compel"). The Respondent requested on expedited ruling based on the upcoming  
3 hearing date.

4 On October 20, 2014, by Procedural Order, a telephonic procedural conference was scheduled  
5 to address the Motion to Compel on October 23, 2014.

6 On October 20, 2014, Complainant filed a Motion for Continuance of Rescheduled Hearing  
7 citing numerous reasons why more time was required to prepare for the hearing.

8 On October 22, 2014, the Company filed its response to the Company's motion requesting a  
9 continuance and a request that the Complainant be ordered to pay its bill.

10 On October 23, 2014, at the procedural conference, Complainant appeared through its officers  
11 and the Company and Staff appeared with counsel. The parties discussed the issues related to  
12 preparing for the hearing and it was agreed that Complainant would file its responses to the  
13 Company's data requests by the end of the business day on October 27, 2014.

14 Accordingly, the proceeding should go forward as agreed by the parties.

15 IT IS THEREFORE ORDERED that the Complainant shall file on October 27, 2014, by 5  
16 p.m., its responses to the Company's data requests.

17 IT IS FURTHER ORDERED that the hearing scheduled on **October 28, 2014, shall be**  
18 **continued to November 6, 2014, at 9:30 a.m., at the Commission's Offices, 1200 West**  
19 **Washington Street, Hearing Room No. 1, Phoenix, Arizona.**

20 IT IS FURTHER ORDERED that, pursuant to A.A.C. R14-2-609(A), that Liberty Utilities  
21 Corporation f/k/a Black Mountain Sewer Corporation shall not terminate service to the Complainant  
22 until a Decision by the Commission in this proceeding, as previously ordered.

23 IT IS FURTHER ORDERED that the Utilities Division be present at the proceeding and be  
24 prepared to participate if required.

25 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized  
26 Communications) continues to apply to this proceeding as the matter is set for public hearing, and  
27 shall remain in effect until the Commission's Decision in this matter is final and non-appealable.

28 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules

1 of the Arizona Supreme Court and A.R.S. §40-243 with respect to the practice of law and admission  
2 *pro hac vice*.

3 IT IS FURTHER ORDERED that withdrawal of representation must be made in compliance  
4 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the  
5 Rules of the Arizona Supreme Court). Representation before the Commission includes the obligation  
6 to appear at all hearings, procedural conferences, Open Meetings for which the matter is scheduled  
7 for discussion, unless counsel has previously been granted permission to withdraw by the  
8 Administrative Law Judge or Commission.

9 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
10 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
11 hearing.

12 DATED this 24<sup>TH</sup> day of October, 2014

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MARCE E. STERN  
ADMINISTRATIVE LAW JUDGE

17 Copies of the foregoing emailed/mailed/delivered  
18 this 24<sup>TH</sup> day of October, 2014 to:

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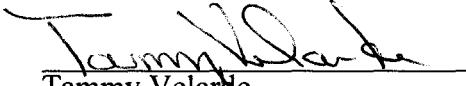
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